THE ADMINISTRATION OF LAWS AND JUSTICE IN EARLY JEWISH AND CHRISTIAN ERAS.

FROM TALMUDIC AND POST-BIBLICAL RECORDS.

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THE thousands of legal works and writings upon jurisprudence, whether derived from the Justinian, Roman, or Napoleonic codes, have not materially improved or supplanted the biblical and talmudic methods of dispensing justice. Albeit a Blackstone has laid down a guide for legal students, the principles are no less derived from the Old Testament laws; a Greenleaf has made some innovations regarding evidence, but, in a general sense, the same rules were applied in their widest sense by the Jews during the two statehoods.

The Hebrew term *Mishpath* expresses a sacred sentiment, while the talmudic *Beth-din*, the tribunal of law, was no less a hallowed conception among the Israelites in their primitive eras. The chief aim of the elders was directed to rightly adjudge all differences according to equitable principles. The biblical dicta, from their very inception, declare for the ethical idea of a place of judgment. The deity is represented as the most high and impartial judge, and it is commanded that all men must appeal to those selected and called to administer affairs of justice. To ask for a decision was to bring the causes of complaints before God; to come before a tribunal was to tread upon holy ground; God was always present. Such was the expression regarding courts and judges.

The most humane, cardinal principle underlying the Jewish methods of jurisprudence was that all men, heathen or Israelite, were equal before the tribunes. In Mosaism no forcible means was advocated, as was the habit among the surrounding nations, which drew lines between castes, and where distinctions were

made between men. The Mosaic laws discriminated largely between parents and their children, as also between the master and his slaves, and they sought more particularly to guard and protect the widows and orphans. The Roman and Greek laws were diametrically opposed to such laws in that these rights were not protected.

That the framers of the Declaration of Independence of the American revolutionists in 1776 had taken their cue from the Judaic system is clearly demonstrated. "All men are equal before the law," is the dictum expressed in the Judaic and American Magna Charta. The Justinian Pandects, more than five hundred years before Christ, were devoid of these cardinal principles.

Prior to the exodus from Egypt the heads of houses were the judges. After that event, Moses, the lawgiver, assumes this prerogative. But this labor was too much for a single person, and he soon organized courts, thereby separating the state affairs from the judiciary. While so journeying in the desert, he was advised by Jethro to cause the people of Israel to elect the most honored, enlightened, and rational men to act as judges over communities comprising 1,000, 100, 50, and 10 persons, making it incumbent upon them that all complicated and difficult causes be finally adjudicated by Moses. All of these judges were provided with associates, termed *Shoterim*, who were the authorized officers for executing all orders and mandates. After the people were domiciled in Palestine, this system was again altered to the circumstances that courts were established in cities and towns. In this, as in former systems, the judges were to submit questions, and decisions, when difficult or complicated, to the upper court, located in the portals of the temple, whereof the high priest was the presiding head. There were evidently many such courts ; the tribunal allows to each court three judges, while Flavius Josephus claims that seven men were the judges.

Aside from these circuit courts there was also a college of elders—a senate whose functions were designed to rid the city of all evil and crime. They had likewise jurisdiction over life and death. They were also a sort of coroner's jury, in case a

person was found murdered, and the person who had committed the deed was unknown.

There was a third tribunal, the heads of which were designated *P'lilim*, arbitrating judges, whose duties were to assess damages and torts.

The upper — or, as we may call it, the supreme — court, located in the anteportals of the holy of holies, was not an appellate court for contending litigants, but rather for the purpose of giving the lower-court judges the privilege to bring questions of law and equity before this highest court. It was permitted, however, for parties at law to place their causes before this court in the beginning. Thus the people were prone to call into their affairs Joshua, Samuel, Saul, and David, and others, as their temporal arbiters. The foremost of these was Samuel, who had attained the greatest popular confidence, having established local courts at Bethel, Gilgal, and Mizpah, which he regularly visited. It is related of David that he selected six thousand Levites as judges and executive officers, placing them in the cities and towns throughout Palestine. Again, when the state suffered partition, King Jehosaphat was active in recognizing the judiciary by appointing judges of the highest tribunal, consisting of priests, Levites, and tribal chieftains. At the head of these, a prince of the house of Judah was appointed as the secular judge, while the high priest was the presiding judge in all spiritual matters. There was, besides, the college of elders, which had the function of deciding all causes.

This was the system of jurisprudence in vogue during the first and second statehood of the Jews, and even throughout the talmudic eras and for several centuries thereafter. Every city contained a local court, and three authorized law professors. If a city contained 120 Jewish citizens, it was provided with a senate of twenty-three members, which was known as the minor sanhedrim, and had jurisdiction in capital punishments. Jerusalem city had two such tribunals, one over the approach of the hill of the temple, and the other in the anteportals of the temple. The latter was termed the Sanhedrim, and consisted of seventy-one members, chiefly priests, Levites, and Israelites. Its presi-

dent was a prince of some tribe, and a parent judge acted as vice-president. Its number, seventy-one, was obligatory, so that a majority decision could always be relied on. Aside from the judges there were two recording clerks for noting decisions, either in cases of acquittal or condemnation.

The difference between the courts which had three judges, with jurisdiction only in civil and minor cause, and the sanhedrim of twenty-three judges was that the latter decided and adjudicated in capital crimes. The local courts were invariably at the portals of a town or city, and near to the public market, where frequent quarrels and differences ensued. The higher courts of the holy city were held in a large and spacious hall of the temple.

During the second Jewish statehood the two small sanhedrims held sessions respectively in the approach to temple hill, and at the antehall of the temple. The great sanhedrim was assigned to an inner chamber of great dimensions. All sessions were public. The judges were ranged in a semi-circular row of seats, so that each could see the other. The prince, or *Nassi*, was the president, who was invariably elected by the members of the sanhedrim; at his right side the parent judge, *Ab-beth-din*, took his station. There were besides three rows of students and candidates, placed a step lower than were the sanhedrim incumbents, and from these candidates vacancies were filled.

The terms of session were not fixed, and were subject to the desires of contending litigants. After the exilic era the local judges were required to hold sessions twice a week — on Mondays and Thursdays — an ordinance ascribed to Ezra. Another ordinance required that sessions should be held during the day — generally in the morning or between the hours of the offering in the temple and the vesper act. The supreme court often continued its sessions after sunset. No sessions of any of the tribunals were permitted either on sabbath or holidays, between the first and fifteenth day of Nisan and Tishri. The feast days were ordained as the first two and the last two days of Pesach (Easter) and Feast of Booths, the two days of Pentecost and New Year, as well as the Day of Atonement. The sessions could

be called at will by the sanhedrim on all other days not otherwise interdicted. The *Nassi* could convene a session whenever occasion required it.

It was the rule that individual litigants could choose their judges by mutual consent. Parties were required to bring all civil suits before their local judges, who had complete jurisdiction. A complainant was required to make his plea verbally or by a written statement, but in no case was he permitted to state the cause. A citation could issue, and a deputy was authorized to summon the defendant for the day and hour set apart; the prosecutor could deliver this subpœna himself, if he desired to do so. It was required that the judge should understand the language of the complainant, although he might not speak his tongue; otherwise he was permitted to employ a translator. None could be heard in the absence of one or the other.

No intimidation was to be allowed. When both came before the courts, the complainant had to state the cause of his complaint, together with all the circumstances relating to it. The defendant was allowed to state in full his counter-argument and defense. A general denial was not accepted.

A person charged with a crime could not be at liberty, and was held in confinement until a decision was rendered in his case. A verdict was never uttered until the second day after the defendant was found guilty, and his execution was at once proceeded with, so that no undue misery or torture might harass the condemned; then, until the last moments before the execution, the culprit was allowed to bring facts before the judges which might be in his favor, and the courts were required to listen to him, and, if necessary, upset their verdict.

The Jewish law tolerated no advocates or lawyers. The complainants and defendants were constantly before the eyes of the judges. Nor were any preliminary investigations permissible of either one or the other party, nor could the courts declare a judgment or verdict in the absence of either the complainant or defendant.

An important feature was the taking of testimony from witnesses; if no witnesses were present or cognizant of the facts,

the oath was of paramount necessity. Aside from these latter, the inquiry into circumstances surrounding a cause are most minutely given in the Talmud. Such methods as tortures and inquisitions are unknown either to the Mosaic or talmudic eras. An execution could take place only in the presence of the judges and the witnesses, which latter were required to lay their hands upon the culprit as the first of the executioners.

CEDARS OF LEBANON